AMANAH INTERNATIONAL FINANCE SDN BHD

v.

APLE-ASIA PACIFIC LEISURE & ENTERTAINMENT (M) SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[CIVIL SUIT NO: D2-22-586-1997]
26 APRIL 2002

CIVIL PROCEDURE: *Summary judgment - Hire-purchase - Guarantee - Claim for compensation upon termination of hire purchase agreement - Quantum - Uncertainty as to quantum claimable - Whether a triable issue - Whether not a proper case for summary judgment*

The plaintiffs and the first defendants had entered into a hire purchase agreement ('the agreement') in respect of 72 items called "Virtual Reality PC Equipment and Component" ('the items'). The items were acquired by the plaintiffs from Imagine Interactive Inc Pte Ltd ('Imagine') for RM3,037,900, for which a deposit of RM1,837,900 had been paid to Imagine leaving RM1,200,000 as outstanding balance. *Inter alia*, the agreement stipulated that the plaintiffs would grant the first defendants a hire-purchase financing of RM1,200,000, whilst the latter would pay certain security deposit to the plaintiffs. Disputes arose between the parties regarding the plaintiffs' alleged failure to pay the balance sum of RM400,000 to Imagine, and the first defendants' alleged failure to remit security deposit of RM350,000, whereupon the plaintiffs terminated the agreement and repossessed parts of the items. Subsequently, the plaintiffs filed their writ and statement of claim claiming for RM600,000 and for damages to be assessed, and thereafter applied for summary judgment against the second and third defendants, the guarantors. The application was however refused whereupon the plaintiffs appealed. Before the learned appellate judge herein, the second and third defendants argued that summary judgment ought not to issue as the transactions were replete with triable issues. It was contended that the plaintiffs were duty bound to pay Imagine the sum of RM1,200,000 before the first defendants were obliged to pay the security deposit, and that, in failing to discharge that duty, the plaintiffs had been in breach of contract resulting in the guarantors being discharged from liability under the guarantee. The second and third defendants further submitted that the notice of demand had not been properly served on them, as the same had been served on the solicitor firm of Albert Toong & Associates, who they said were not their solicitors. The main issue that arose was whether the plaintiffs in the circumstances were entitled to summary judgment.

Held:

[1] The second and third defendants cannot be allowed to raise the question of service because they have not disputed service in their affidavit. Service of the demand on Albert Toong & Associates, alleged to be the solicitors of the second and third defendants, was averred in para 18 of the plaintiffs' affidavit of 7 August 1997. The second and third defendants did not dispute that averment and therefore it must be assumed that the demand did reach them. (p 20 d-e)

[2] The original cash price of the entire items was RM3,037,900 when they were bought. They were repossessed about eight months later. In the circumstances, assuming that half was repossessed, their original price would have been RM1,518,950. Further, assuming that after eight months the value of the goods had diminished to RM900,000, and that the plaintiffs' profits on the RM800,000 over 24 months was RM123,000, the balance of the hire purchase price would therefore be RM923,000. However, from that should be deducted RM900,000, the value of the goods. Thus, there would be left only RM23,000. This being the case, it would therefore not be right to order the second and third defendants to pay the plaintiffs RM600,000 now. It might be asking them to pay what they might be found later after assessment of damages not to be liable for. (p 28 b-d)

[3] In any case, on the termination of a hire purchase agreement, the agreement itself provides for the determination of the net final figure that is due, and only that is to be claimed, besides interest and costs. There can be no such thing as giving judgment first for the amount disbursed, less payments made, and leaving the owner's profits and credit for goods repossessed to be determined later in an assessment of damages. (p 28 f)

[4] As the court is not satisfied that there is no likelihood that ordering the second and third defendants to pay RM600,000 would not be ordering them to pay more than what may eventually be found to be due under the hire purchase agreement, no summary judgment could be allowed. (p 28 g-h)

[Appeal dismissed.]

For the plaintiffs - Tong Veng-Ky; M/s WY Chan & Roy
For the 2nd & 3rd defendants - Harjinder Singh; M/s Nordin Hamid & Co

Reported by WA Sharif

JUDGMENT

Abdul Aziz Mohamad J:

The plaintiffs, having been refused summary judgment against the second and third defendants, now appeal. The second and third defendants have signed a guarantee and indemnity in respect of a hire-purchase agreement entered into by the plaintiffs as owner and the first defendants as hirer. The plaintiffs' claim against the second and third defendants is under the guarantee and indemnity and is basically for losses and damages allegedly suffered by them in consequence of an alleged breach of the hire-purchase agreement by the hirer, which resulted in its termination by the plaintiffs. The first defendants have been wound up since this action was filed.

One issue raised in this appeal by the second and third defendants concerns service of the letter of demand.

Clause 7 of the guarantee and indemnity provides as follows:

> Any notice or demand made by you hereunder may be served on me/us personally or sent to me/us at my/our last known address and if sent by post shall be conclusively deemed to have been received by me/us within forty-eight (48) hours after the time of posting despite any evidence to the contrary.

It is argued in submission that there is a triable issue whether the second and third defendants had been served with the letter of demand because it was served not in accordance with cl. 7 but on Albert Toong & Associates, the solicitors, and because they were not, so it is claimed in submission, the solicitors acting for the second and third defendants.

The relevant part of cl. 1 of the guarantee and indemnity provides as follows:

> I/we the undersigned hereby jointly and severally guarantee on written demand by you the punctual payment by the Hirer of all sums which may become due to you under the said Hire Purchase Agreement or any variation or extension thereof and the due performance of all the Hirer's obligation in the said Hire Purchase Agreement or variation or extension thereof to be performed and observed by the Hirer, and I/we further jointly and severally undertake to indemnify you against all losses expenses (including legal costs on a full indemnity basis) charges and damages incurred or suffered by you in consequence of any failure by the Hirer to perform any of the Hirer's obligation under the Hire Purchase Agreement.

There are two limbs in that clause. The first is a guarantee of punctual payment by the hirer and of the performance of the hirer's obligations. The obligation to honour the guarantee arises "on written demand" by the plaintiffs. The second limb is an undertaking to indemnify the plaintiffs against losses and so on

arising from a breach by the hirer of the hire-purchase agreement. The liability to indemnify is not stated to be dependent on a written demand. So it would appear that a written demand is not required in respect of the indemnity.

But in submission on the main substantive issue that is raised in submission, learned counsel for the second and third defendants strenuously maintains that the guarantee and indemnity in this case is actually a guarantee and not an indemnity. Paragraph 4 of his written submission, which is covered by nine pages from p. 12 to p. 21, is devoted to citing authorities and examining the terms of the guarantee and indemnity to support the contention that it is actually a guarantee. I do not find the submission frivolous. Learned counsel for the plaintiffs, on the other hand, in his written submission has not attempted to argue against the argument presented by the defendants' counsel for his contention. He merely falls back on the wording of cl. 1 of the guarantee and indemnity that I have cited.

But even if the guarantee and indemnity is actually a guarantee and a written demand is, therefore, necessary, I think the second and third defendants cannot be allowed to raise the question of service because they have not disputed service in their affidavit. Service of the demand on Albert Toong & Associates, alleged to be the solicitors for the second and third defendants, is averred in para. 18 of the plaintiffs' affidavit dated 7 August 1997. The second and third defendants have not disputed that averment. It must be assumed, therefore, that the demand did reach them.

In order to claim that there has been no service of the demand by reason of service not having been effected in accordance with cl. 7, it is important that the second and third defendants affirm that they did not in fact receive the letter of demand. If in fact the letter of demand reached them, if, for example, it was served on their agent who did transmit the letter to them, I do not think they can rightly claim that there has been no service because service did not comply with cl. 7. Compliance with cl. 7 would give a guarantee to the plaintiffs that service cannot be challenged. But non-compliance with cl. 7 cannot avail either defendant if they did receive the letter of demand, which they must be presumed to have done as they do not deny service in face of the averment as to service. To dispute service by reason of non-compliance with cl. 7, they must, in face of the averment as to service, be prepared to affirm that they did not receive the letter of demand.

Neither can it be submitted that Albert Toong & Associates were not the solicitors for the second and third defendants, in face of the averment in para. 18 of the plaintiffs' affidavit dated 7 August 1997, unless the second and third defendants themselves so affirm by affidavit. By their not denying the fact by affidavit, the plaintiffs have been deprived of an opportunity to prove the fact,

so that the plaintiffs' counsel was driven to attempt to produce during submission a letter from Albert Toong & Associates to prove that they were acting for the two defendants, but that was of course objected to on grounds of improper introduction of evidence. Had the second and third defendants raised the question in their affidavit, the plaintiffs would have been able to produce the letter by way of affidavit.

To deal with the main substantive issue that is debated in submission, I shall have to set out certain events that are or may be relevant to the issue, as evidenced by the documents exhibited to the affidavits of both parties.

The goods that were the subject of the hire-purchase agreement comprised twenty-seven items, called "Virtual Reality PC Equipment and Component". Depending on the type of item, an item came in units or pieces or stations. In all, there were eighty units, pieces and stations.

On 15 October 1996 Imagine Interactive Inc Pte Ltd ("Imagine"), a Singapore company, issued to the plaintiffs a debit note in respect of the sale of the goods at S$1,700,000 (RM3,037,900) for which, according to the debit note, a deposit of S$1,028,483.49 (RM1,837,900) had been paid, leaving an amount of S$671,516.51 (RM1,200,000) outstanding. The price of S$1,700,000 was the total of the twenty-seven prices for the respective twenty-seven items. Looking at the debit note alone, it would appear that the goods were sold by Imagine to the plaintiffs.

It is not in evidence who paid the deposit of S$1,028,483.49. Neither is it in evidence what led to the issue of the debit note. There is no documentary evidence as to how it all started. The second and third defendants in para. 3 of their affidavit dated 29 August 1997 say, without documentary proof, that on 5 January 1997 the first defendants ordered the goods from Imagine, but that was after the date of the debit note and the plaintiffs claim to have no knowledge of the alleged order of 5 January 1997. In fact, in para. 5 of their affidavit dated 9 December 1997 the plaintiffs say that they only received the debit note on 5 February 1997 and from the defendants. Arising from that, it may be asked whether it was the plaintiffs or the first defendants who paid the deposit of S$1,028,483.49. But all this has not been addressed in submission, so that it may be taken that to the parties it is not relevant to the issue in dispute. That question would be very pertinent if an issue in this case were that the transaction between the plaintiffs and the first defendants was in fact a loan transaction disguised as a hire-purchase agreement.

On 30 January 1997 the first defendants wrote to the plaintiffs. The purpose of the letter was to urge the plaintiffs to remit urgently to Imagine only RM800,000 and not the full amount of balance outstanding of RM1,200,000. The first defendants said that they "would only be required to pay the balance"

of RM400,000 in February. They also said that Imagine "will be sending the balance of their expertise only upon receipt of wire transfer", meaning the payment of RM800,000. They also said: "We urgently require this wire transfer to them as they need to complete the final touches to our Opening Ceremony on 1 February". The letter shows that to the first defendants' understanding, so long as RM800,000 was paid, Imagine would provide the balance of their expertise and the final touches, but this point does not arise in submission.

On 5 February 1997 the plaintiffs issued to the first defendants a letter of offer saying that they had agreed to hire the goods to the first defendants. The first defendants accepted the offer and its terms and conditions on the same date. Among the terms and conditions were the following. The cost of the goods was RM3,037,900, which was the price at which the goods were purchased from Imagine. The amount financed was RM1,200,000, which was the amount remaining due to Imagine. The hire term was 24 months and the first defendants had to pay RM57,672 per month. The total payment at the end of the period would therefore be RM1,384,128, which would be RM184,128 more than the amount financed, so that that sum would be the plaintiffs' profits from the financing.

Further, the first defendants were to pay a security deposit comprising RM300,000 to be paid in cash within seven days of 5 February 1997, RM250,000 to be paid in cash within thirty days of that date, and 50% of gate collections until the total deposit amounted to RM1,200,000. The security deposit was to be used against any overdue instalments and had to be topped up whenever utilised.

On the same date as the letter of offer, 5 February 1997, the plaintiffs wrote to Imagine to say that they had granted hire-purchase financing of RM1,200,000 for purchase of the goods by the first defendants. The plaintiffs undertook, saying that it was at the first defendants' request, to pay Imagine a sum not exceeding RM1,200,000 "upon satisfactory completion of all hire purchase documentation by (the first defendants)" and the fulfilment of a condition, which need not be mentioned. The plaintiffs also said that the payment of that sum would only be made upon receipt of the first defendants' instructions to do so. The plaintiffs also said that the undertaking would be valid for thirty days.

Also on the same date, 5 February 1997, the first defendants again asked the plaintiffs to remit RM800,000 to Imagine.

Next day, 6 February 1997, the hire-purchase agreement was executed. According to Part B of the Schedule, the total hire-purchase price was RM3,222,028, consisting of the cash price of the goods of RM3,037,900 and the term charges of RM184,128, which I have said were profits. From the hire-

purchase price was deducted the deposit of RM1,837,900, the amount mentioned in Imagine's debit note, leaving a balance payable – the balance of hire-purchase price – of RM1,384,128, which 24 payments of RM57,672 each would come to.

It is not disputed that the letter of offer formed part of the hire-purchase agreement.

On 20 February 1997 and 24 February 1997 the first defendants paid to the plaintiffs RM200,000, RM100,000 on each occasion, as security deposit. Going by the letter of offer, they should have already paid RM300,000.

On 28 February 1997 the first defendants wrote to the plaintiffs asking them to remit the balance of RM400,000 to Imagine.

On 7 March 1997 the first defendants placed a stop-payment order on their cheque for RM100,000 dated 5 March 1997 and intended as another payment of the security deposit. In para. 9 of their affidavit dated 25 November 1997 the defendants say that the cheque was stopped because the plaintiffs had not paid Imagine the balance of RM400,000.

On 11 March 1997 the first defendants wrote to the plaintiffs to complain about the plaintiffs' still not having paid Imagine the RM400,000. They said that, as a result, Imagine "have totally stopped installing our equipment". They set out the consequences to them financially and as regards their credibility of their inability to use the equipment because it had not been installed.

On 8 April 1997 the plaintiffs' solicitors wrote in reply to a letter of the first defendants' solicitors dated 4 April 1997, which is not exhibited. The plaintiffs' solicitors said that the plaintiffs were not obliged to release the balance of RM400,000 to Imagine because the first defendants were in breach of condition as to payment of the security deposit. They, however, said that the plaintiffs were prepared to release the balance if the first defendants paid RM350,000, that is the balance of the security deposit then overdue, within seven days, failing which the plaintiffs would rescind the hire-purchase agreement and treat it as void and demand from the first defendants the return of the goods or compensation "for the price of the goods being the sum of RM800,000 paid to the supplier and for any loss suffered by our client".

It is to be noted that the action threatened was rescission of the agreement to be followed by a demand either for the return of the goods or payment of RM800,000, besides compensation for any loss suffered.

On 11 June 1997 the plaintiffs' solicitors wrote to the defendants to say that as the first defendants had failed to pay the balance security deposit of RM350,000, they were in breach of the hire-purchase agreement and that the plaintiffs accepted the breach and terminated the agreement. The plaintiffs demanded possession of the goods within seven days, saying that Imagine did not dispute the plaintiffs' ownership of the goods.

It is to be noted that what the plaintiffs actually did was to terminate the hire-purchase agreement and not to rescind it.

That letter was followed by a letter dated 25 June 1997 from the plaintiffs' solicitors to the defendants' solicitors demanding payment of RM1,384,128, that is the balance of hire-purchase price, less the security deposit of RM200,000, within seven days.

On 28 June 1997, according to para. 13 of the statement of claim, the plaintiffs repossessed part of the goods. It is not in evidence which items were repossessed, or what was the total purchase price of the items repossessed.

On 26 July 1997 the plaintiffs filed their writ and statement of claim. Their primary claim was for the balance of the hire-purchase price of RM1,384,128 less the security deposit of RM200,000 (RM1,184,128), or the sum of RM800,000 less the security deposit of RM200,000 (RM600,000) and damages to be assessed. Their claim also included, besides interest and costs, the cost and expenses in respect of the repossession and storage of the goods. On this appeal they have abandoned the principal claim of RM1,184,128, so that the principal claim is now for RM600,000 and damages to be assessed.

The main substantive issue that is raised in submission in this appeal is this. The second and third defendants say that it was the plaintiffs' obligation to pay Imagine the whole of the RM1,200,000 before the first defendants were obliged to pay the security deposit, and that because the plaintiffs failed to discharge that obligation, they were in breach of contract. The effect of the breach of contract was to discharge the second and third defendants from liability under the guarantee and indemnity because the guarantee and indemnity was in law actually a guarantee only and they were actually guarantors only.

The plaintiffs' position, as their submission goes, is that they were not obliged to disburse the financed amount of RM1,200,000 unless the first defendants first paid the security deposit and that although they did disburse RM800,000 it was only by way of relaxation and indulgence.

It is to be appreciated that, including 50% of the gate collections, the security deposit would come to RM1,200,000, the amount financed, so that, ultimately being in possession of that sum, the plaintiffs would have complete security to

the extent of the principal sum of RM1,200,000 to be utilised whenever the first defendants defaulted in respect of any monthly instalment. If the security deposit were replenished every time it was utilised upon default – which a defaulter would not be likely to be able to see done – the security deposit would in time exceed the balance outstanding of the hire-purchase price. It was like having as security a charge on a property whose value is sufficient to cover at least the principal amount.

Yet the plaintiffs seem to say that it would be sufficient for the first defendants to pay only RM550,000 of the security deposit, for the plaintiffs to be obliged to disburse the RM1,200,000. I initially found difficulty with this partial dependence on the security deposit. It was not provided for in the letter of offer and it would not satisfy the purpose of the security deposit, which was meant to cover the whole of the financed amount. The plaintiffs would, I think, not dare to say that the first defendants must first pay the whole of the security deposit before they were obliged to disburse the financed amount because it could not have been known when gate collections would reach RM1,300,000, for 50% of it, RM650,000, to have been paid to the plaintiffs to bring the security deposit up to the sum of RM1,200,000. The plaintiffs, therefore, say that only RM550,000 would do. But if the first defendants paid that sum, and the plaintiffs disbursed in full the sum of RM1,200,000, and then the first defendants started to default in instalments and the hire-purchase agreement was terminated, the plaintiffs would only have less than half of the security to fall back on. I at first was inclined to think that if the plaintiffs' stand was that it did not matter if the first defendants did not first pay the entire security deposit, then it should not matter if they did not pay any amount of the security deposit. But on further reflection I think that that would not be a reasonable attitude and that a pragmatic approach should be adopted. The pragmatic approach is to say never mind if the plaintiffs could not get the entire security deposit, but at least let them have what they could have. Let the agreement be construed reasonably by splitting the security between the fixed amounts that were payable by certain dates, on the one hand, and the uncertain gate collections, on the other hand. Let the RM550,000 be held to be the security that is relevant for the purposes of the dispute on this point.

In support of the contention that the first defendants had to pay the security deposit of RM550,000 first before the plaintiffs were obliged to disburse the financed amount of RM1,200,000, learned counsel for the plaintiffs turns to their letter of undertaking dated 5 February 1997 to Imagine, which is heavily relied upon by the second and third defendants. As has been seen, the undertaking was only for thirty days from the date thereof, which was also the number of days that the first defendants had in which to pay fully the security deposit of RM550,000. The period expired on 4 March 1997, by which

date the first defendants had only paid RM200,000 of the security deposit. The undertaking was further subject to satisfactory completion of hire-purchase documentation by the first defendants. Relying on those two features of the undertaking, learned counsel for the plaintiffs argue that it was an implied term of the undertaking that it was subject to payment of the security deposit of RM550,000. If the plaintiffs are right, then it avails the second and third defendants nothing to rely on the undertaking to contend that the plaintiffs must first disburse the sum of RM1,200,000 before the first defendants were bound to pay the security deposit. I suppose what learned counsel for the plaintiffs means by "implied term" is that payment of the security deposit of RM550,000 would have been part of the satisfactory completion of the hire-purchase documentation, considering that the sum of RM550,000 was a security and that were it land instead of cash the charge would have to be secured first as part of the hire-purchase documentation before the plaintiffs would become obliged to disburse the amount financed. Such an argument could in fact be advanced by reference to the letter of offer itself, which was part of the hire-purchase agreement, without having to rely on the undertaking. It could be argued that the RM550,000 being security, and were it land the financing would not have been released unless the charge documentation in respect of the land had been perfected, it must be implied that financing would not be disbursed unless the security was in the plaintiffs' hands. That would sound perfectly reasonable because, as I said, if the plaintiffs disbursed the loan before the security deposit was paid, and at any time thereafter the first defendants defaulted on any instalment and the plaintiffs had to terminate the hire-purchase agreement, the plaintiffs would be without the security of the sum. The point simply is that where a security is required for disbursement of a facility, the facility is never disbursed until the security is in hand. As I am saying that, I am aware that to adopt that line of argument is akin to viewing the transaction not as a hire-purchase agreement, but as a loan transaction, but, as I said, that is not the case of the second and third defendants.

But even if the plaintiffs are right that they were not obliged to pay Imagine the sum of RM1,200,000 unless the first defendants paid the security deposit of RM550,000, I see a difficulty that arises from another issue raised in submission by learned counsel for the second and third defendants. Briefly put, the issue is this. Even if the guarantee and indemnity were an indemnity, it cannot be enforced against the second and third defendants because they would be liable only for actual loss, but the RM600,000 claimed is not actual loss but loss on paper because it has not taken into account the value of the goods repossessed. Therefore the claim is premature. The reply of the plaintiffs' counsel is that the plaintiffs were unable to sell the goods that had been

repossessed, but RM600,000 was actual loss, besides which the plaintiffs are also claiming damages which will be assessed if the plaintiffs are able to sell the goods.

The plaintiffs' cause of action is founded on breach of the hire-purchase agreement. As I have mentioned, the plaintiffs have abandoned their main prayer in their application for summary judgment, which was a prayer for the balance of the hire-purchase price of RM1,384,128 less the RM200,000 security deposit that had been paid. That prayer, as well as all the other prayers, was sought against all the defendants, meaning that the plaintiffs' case is that the second and third defendants will be liable under the guarantee and indemnity for nothing more nor less than what the first defendants would be liable for upon termination of the hire-purchase agreement. The liability of the first defendants upon termination of the hire-purchase agreement is spelt out in cls. 15.2 and 15.3. They would be liable to pay the unpaid balance of the hire-purchase price, less other sums payable under the agreement, less the net proceeds of sale of the goods if repossessed and sold, and less a rebate, if any. Alternatively, if the goods were not repossessed, the first defendant would be liable for the same sums without deduction of the proceeds of sale of the goods. Those clauses do not provide for the event of the goods being repossessed but not sold. For present purposes I am going to proceed on the basis that in that event credit must be given for the value of the goods.

The balance of the hire-purchase price is given in Part B of the Schedule to the hire-purchase agreement. It is RM1,384,128. As has been seen, it consists of the financed amount of RM1,200,000 and the profits on it of RM184,128 over twenty-four months. It means that if the hire-purchase agreement was terminated for the first defendants' default, the plaintiffs must be compensated with the sum they had disbursed and the profits that they would have got had the agreement not been terminated, less of course any amounts paid by the first defendants, which is only the RM200,000 security deposit. But the plaintiffs could not claim RM1,384,128 for two reasons. First, because they did not disburse RM1,200,000 but only RM800,000 and the profit on RM800,000 only would not be RM184,128. Secondly, since some of the goods had been repossessed, the proceeds of sale of the goods or their value would have to be deducted, which was not done. Either or both of those reasons could be the reason why the plaintiffs abandoned the claim for RM1,384,128 less RM200,000.

Now, as an alternative, the plaintiffs are claiming RM800,000 less the security deposit of RM200,000. The RM800,000 was the amount disbursed. The plaintiffs are not claiming profits on it, leaving them as damages to be assessed later. I suppose that, in itself, would be alright because if the defendants were ordered to pay RM600,000, that is after deducting the RM200,00, that would be less than the plaintiffs' full entitlement. But the goods repossessed have not been accounted for. It is not in evidence which of the eighty units, pieces and stations have been repossessed or what their value is. The original cash price of the entire goods was RM3,037,900 when they were bought. That was the value on 15 October 1996, the date of Imagine's invoice. They were repossessed on 28 June 1997, about eight months later. Let us say that half was repossessed. Their original purchase price would have been RM1,518,950. Let us say that after eight months the value of the goods had diminished to RM900,000. Let us further say that the profits on RM800,000 over 24 months would be RM123,000. The balance of the hire-purchase price would therefore be RM923,000, but from that should be deducted RM900,000, the value of the goods. There would be left only RM23,000. It would, therefore, not be right to order the second and third defendants to pay the plaintiffs RM600,000 now. It might be asking them to pay what they might be found after assessment of damages not to be liable for. The assumptions as to the plaintiffs' profits and the value of the goods repossessed that I have made are very rough assumptions and may not be right, but I have to make them to come to a decision whether it would be just to the second and third defendants to give summary judgment in the terms in which it is now sought, which terms are not appropriate for a judgment for compensation on termination of a hire-purchase agreement. On the termination of a hire-purchase agreement, the agreement itself provides for the determination of the net final figure that is due, and only that is to be claimed, besides interest and costs. There can be no such thing as giving judgment first for the amount disbursed, less payments made, and leaving the owner's profits and credit for goods repossessed to be determined later in an assessment of damages.

I am unable to order summary judgment because I am not satisfied that there is no likelihood that ordering the second and third defendants to pay RM600,000 would not be ordering them to pay more than what may eventually be found to be due under the hire-purchase agreement.

I dismiss the appeal with costs.